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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In Re
PG&E CORPORATION,
and
PACIFIC GAS AND ELECTRIC
COMPANY
Debtors.

Affects:

PG&E Corporation
Pacific Gas & Electric Company
Both Debtors

* All papers shall be filed in the Lead
Case, No. 19-30088 (DM).

Case No. 19-30088 (DM)

Chapter 11

(Lead Case—Jointly Administered)

**KIMBERLY LOCKE-RUSSELL'S
MOTION TO DEEM HER LATE-
FILED PROOF OF CLAIM
TIMELY; MEMORANDUM OF
POINTS AND AUTHORITIES**

Date: March 24, 2021

Time: 10:00 a.m. (Pacific)

Place: **Telephonic Appearances Only**
United States Bankruptcy

Court: Courtroom 17, 16th Floor
San Francisco, CA 94102

Objection Deadline: December 1, 2020

TO THE HONORABLE DENNIS MONTALI, UNITED STATES
BANKRUPTCY COURT JUDGE, THE OFFICE OF THE UNITED STATES
TRUSTEE, AND ALL INTERESTED PARTIES:

By virtue of the Motion, Ms. Kimberly Locke-Russell ("Ms. Locke-Russell")
seeks to deem her late-filed proof of claim timely.

I. Summary of Argument

A proof of claim may be deemed timely upon a showing of excusable neglect and lack of prejudice. In this case, Ms. Locke-Russell was stationed with her husband on a military base. Her grandmother's house which she had hoped to inherit someday was completely destroyed. She wasn't in Paradise at the time of the fire, but her family and friends were. She lived on the military base with her husband and took care of her autistic son. Her things back home in Paradise were packed in storage. In conversations with her family, she truly believed that she was put on her parents' proof of claim. Unfortunately, she later learned that she was not put on her parents' proof of claim and thereafter came to an attorney for help in remedying an error not of her own creation. Because there is no danger of prejudice to the Debtors as Debtors' estates are solvent, and all creditors stand to be paid, the Motion should be granted to have Ms. Locke-Russell, military spouse and proud mother of an autistic son, to have her late-filed claim deemed timely.

II. Factual Background

A. Locke-Russell's Claims Arising From Camp Fire and Retention of Counsel.

Ms. Garwood was not in Paradise at the time of the Camp Fire. However, she was specifically affected by it as that is where all her friends and family resides. Her grandmother's home – the one she hoped to inherit someday – burned down to the ground. All of her personal property left behind at her grandmother's home in Paradise was destroyed.

Ms. Locke-Russell rightly believed PG&E and the Camp Fire it created caused her significant damages compensable by law. She believed that she could pursue her claims by being named on the proof of claim of her parents (also Camp Fire Victims). However, Ms. Locke-Russell came to learn that she was not, in fact, listed as a claimant on her parent's proof of claim, but wishes to submit a for damages with the Fire Victim's Trust before the February 26, 2021 deadline to do so. Undeniably, she

1 has significant damages in personal property loss and nuisance damages.

2 **B. Pertinent Bankruptcy Background**

3 On January 29, 2019, PG&E Corporation and Pacific Gas and Electric
4 Company (“Debtors” or “PG&E”) commenced with the Court voluntary cases
5 (“Chapter 11 Cases”) under chapter 11 of the United States Code (“Bankruptcy
6 Code”). PG&E’s chapter 11 filings were necessitated by a confluence of factors
7 resulting from catastrophic fires that occurred in Northern California before the
8 Petition Date, and PG&E’s potential liabilities arising therefrom.

9 The deadline for filing proofs of claim regarding any prepetition claim
10 including, but not limited to, all claims of Fire Claimants, Wildfire Subrogation
11 Claimants, Governmental Units and Customers, and to avoid doubt, including all
12 secured claims and priority claims, against either of the Debtors was October 21, 2019
13 at 5:00 p.m. (“General Bar Date”).

14 The deadline for filing claims was extended to December 31, 2019 (“Extended
15 Bar Date”), solely to benefit any non-governmental Fire Claimants who did not filed
16 Proofs of Claim by the General Bar Date. See, Dk. No. 4672.

17 On January 31, 2020, as Dk. No. 5590, the Debtors filed an Amended Chapter
18 11 Plan Debtors' and Shareholder Proponents' Joint Chapter 11 Plan of Reorganization
19 Dated January 31, 2020.

20 On February 7, 2020, as Dk. No. 5700, the Debtors filed a Disclosure Statement
21 for the Amended Plan.

22 On February 19, 2020, as Dk. No. 5835, the Debtors filed Motion for Entry of
23 an Order (I) Approving Form and Manner of Notice of Hearing on Proposed
24 Disclosure Statement; (II) Establishing and Approving Plan Solicitation and Voting
25 Procedures; (III) Approving Forms of Ballots, Solicitation Packages, and Related
26 Notices; and (IV) Granting Related Relief (“Solicitation Procedures Motion”).

27 On March 17, 2020, the Solicitations Procedures Motion was approved.
28

1 After filing multiple iterations of the plan, on June 19, 2020, as Dk. No 8048,
2 the Debtors filed an Amended Joint Chapter 11 Plan of Reorganization dated June 19,
3 2020 (“Final Plan”).

4 On June 20, 2020, post-voting and hotly contested confirmation hearings, the
5 bankruptcy court entered an order confirming the Final Plan. See, Dk. No. 8053.

6 **III. Legal Argument**

7 In a Chapter 11 case, the time to file a proof of claim may be extended under
8 certain circumstances. Fed. R. Bank. Pro. 3003(c)(3); Fed. R. Bank. Pro. 9006(b)(1).
9 The bankruptcy court has “broad equitable powers” in a Chapter 11 case regarding the
10 timing requirement for proofs of claim. *Pioneer Inventory Services v. Brunswick*
11 *Associates Limited Partnership*, 507 U.S. 380, 389 (1993). Altogether, Rule
12 9006(b)(1) allows “late filings caused by inadvertence, mistake, or carelessness, not
13 just those caused by intervening circumstances beyond the party's control.” *Id.*, at 381.
14 Even a creditor that received notice may file a proof of claim notwithstanding the
15 expiration of a claims bar date in a Chapter 11 case upon showing “excusable
16 neglect.” *Id.* At 394-95 (“Had respondents here been prevented from complying with
17 the bar date by an act of God or some other circumstance beyond their control, the
18 Bankruptcy Court plainly would have been permitted to find ‘excusable neglect’
19 [under FRBP 9006].”).

20 In considering whether a creditor’s failure was the product of “excusable
21 neglect,” the court should take “account of all relevant circumstances surrounding the
22 party’s omission,” including “the danger of prejudice to the debtor, the length of the
23 delay and its potential impact on judicial proceedings, the reason for the delay,
24 including whether it was within the reasonable control of the movant, and whether the
25 movant acted in good faith.” *Id.* at 395; see also *Corning v. Corning (In re Zilog,*
26 *Inc.)*, 450 F.3d 996 (9th Cir. 2006) (noting *Pioneer*’s non-exhaustive list of relevant
27 factors). Again, a late-filed proof of claim is allowable where a creditor had actual
28 notice of the bankruptcy but, due to some external reason, failed to file a proof of

1 claim or did not realize that she had to, before the bar date. See, e.g., *ZiLOG, Inc. v.*
2 *Corning (In re ZiLOG, Inc.)*, 450 F.3d 996, 1003-07 (9th Cir. 2006) (applying the
3 *Pioneer* factors). Altogether, Rule 9006(b)(1) allows “late filings caused by
4 inadvertence, mistake, or carelessness, not just those caused by intervening
5 circumstances beyond the party's control.” *Pioneer*, 507 U.S. at 381. Here,
6 consideration of all four *Pioneer* factors—and a fifth engrafted onto the *Pioneer*
7 analysis by some courts—weighs in favor of Ms. Locke-Russell.

8 Because in this case there is no danger of prejudice to the Debtors, the first
9 *Pioneer* factor weighs overwhelmingly in Ms. Locke-Russell’s favor. Debtors’ estates
10 are solvent, and all creditors stand to be paid. See, e.g., *In re Best Payphones, Inc.*,
11 523 B.R. 54, 75-6 (Bankr. S.D.N.Y. 2015) and *In re Sheehan Mem’l Hosp.*, 507 B.R.
12 802, 803 (Bankr. W.D.N.Y. 2014) (where the chapter 11 estate is solvent, “the proper
13 remedy for a late filing is not the expungement of a claim, but its allowance as a
14 tardily filed claim only.). Secondly, when she received information she was not on her
15 parents’ proof of claim she relayed that information to her attorney. So, any delay in
16 filing the Subject Proof of Claim is reasonable considering the circumstances of Ms.
17 Locke Russell at a military base with her husband and child thinking she had been
18 placed on her parents’ proof of claim, only to find out later she was not. Lastly, any
19 prospect of prejudice beyond solvency is unlikely given (a) all distributions have not
20 been made; and (b) the value of Ms. Garwood’s claim relative to the value of Debtors’
21 estates is low. See, e.g., *In re Keene Corp.*, 188 B.R. 903, 910 (Bankr. S.D.N.Y. 1995)
22 (size of the late claim in relation to the estate is a consideration in determining
23 prejudice). Furthermore, Ms. Locke-Russell’s claim has been fully worked up by
24 attorney whose office can submit her claim with the Fire Victim’s Trust immediately
25 as long as this Motion is granted. Accordingly, granting this Motion shall prejudice
26 no other party’s rights or interests. Denying this motion because of her mistaken
27 belief she was listed as a claimant on her parents’ claim on the other hand, would
28 severely prejudice Ms. Locke-Russell for the rest of her life.

1 **IV. Conclusion**

2 Ms. Locke-Russell respectfully requests this Court enter an order under
3 Bankruptcy Rule 9006(b)(1) as follows:

- 4 1. Granting the Motion;
- 5 2. Finding that Subject Proof of Claim filed by Ms. Locke-Russell is to be
6 deemed timely filed;
- 7 3. Granting such other or further relief as the Court deems just and proper.
- 8

9 Dated: February 23, 2021 CASEY GERRY SCHENK
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